

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CALVIN LETROY HUNTER,

Petitioner,

VS.

RICK THALER, Director, Texas Department
of Criminal Justice, Correctional Institutions
Division,

Respondent.

[illegible]

CIVIL CASE NO. 10-778

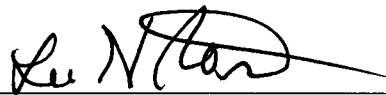
ORDER

The petitioner, Calvin Letroy Hunter, has filed several motions relating to his claim that mental retardation precludes his execution under *Atkins v. Virginia*, 536 U.S. 304 (2002). When Hunter presented his *Atkins* claim to the state courts, the State of Texas responded by having Dr. George C. Denkowski, a psychologist, test Hunter for mental retardation. The state habeas court relied on Dr. Denkowski's testimony in denying Hunter's *Atkins* claim. Hunter has now filed a settlement agreement between the Texas State Board of Examiners of Psychologists and Dr. Denkowski reprimanding him for his forensic services and barring him from making mental-retardation evaluations in criminal proceedings. (Docket Entry Nos. 13-16, Attachment 1). On that basis, Hunter asks the court to hold an evidentiary hearing (Docket Entry No. 14), allow discovery (Docket Entry No. 15), and expand the record (Docket Entry No. 16). Most important, Hunter asks this court to stay his federal proceedings so that the state courts can reconsider Dr. Denkowski's findings in light of his recent reprimand. (Docket Entry No. 13).

The court finds that the interest of justice are best served by giving the Texas courts the first

opportunity to consider how Dr. Denkowski's reprimand impacts Hunter's *Atkins* claim. The court, therefore, grants Hunter's motion to stay. (Docket Entry No. 13). Hunter must seek relief in state court and file a motion to reopen in federal court if necessary. This case is stayed and administratively closed. The court denies without prejudice Hunter's outstanding motions for factual development, without prejudice to later assertion if appropriate. (Docket Entry Nos. 14-16).

SIGNED on June 6, 2011, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal
United States District Judge